

असाधारण EXTRAORDINARY भाग II—खण्ड 2 PART II—Section 2 प्राधिकार से प्रकारित

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इस भाग में भिन्न पृष्ठ संख्या दी जाती हैं जिससे कि यह अलग संकलन के रूप में रखा जा सके। Separate paging is given to this Part in order that it may be filed as a separate compilation

LOK SABHA

The following Bills were introduced in Lok Sabha on the 18th May, 1979:—

BILL No. 75 of 1979

A Bill to amend the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976

BE it enacted by Parliament in the Thirtieth Year of the Republic of India as follows:—

- 1. (1) This Act may be called the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Amendment Act, 1979.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
- 2. In section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 (hereinafter referred to as the principal Act),—
 - (a) after sub-section (6), the following sub-section shall be inserted, namely:—
 - "(6A) Notwithstanding anything contained in sub-section (6), where the Chairman considers it necessary so to do for the expeditious disposal of appeals under this section, he may constitute a Bench of two members and a Bench so constituted may exercise and discharge the powers and functions of the Appellate Tribunal:

Short title and commencement.

Amendment of section 12 of Act 13 of 1976. Provided that if the members of a Bench so constituted differ on any point or points, they shall state the point or points on which they differ and refer the same to a third member (to be specified by the Chairman) for hearing on such point or points and such point or points shall be decided according to the opinion of that member.";

- (b) after sub-section (7), the following sub-section shall be inserted, namely:—
 - "(8) On application to the Appellate Tribunal and on payment of the prescribed fee, the Tribunal may allow a party to any appeal or any person authorised in this behalf by such party to inspect at any time during office hours, any relevant records and registers of the Tribunal and obtain a certified copy of any part thereof."

Amendment of section 26.

- 3. In section 26 of the principal Act, in sub-section (2), after clause (a), the following clause shall be inserted, namely:—
 - "(aa) the fees which shall be paid for the inspection of the records and registers of the Appellate Tribunal or for obtaining a certified copy of any part thereof under sub-section (8) of section 12;".

Sub-section (6) of section 12 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 provides that the Chairman of the Appellate Tribunal under that section may constitute Benches consisting of three members for hearing appeals under the Act. As only a three-member Tribunal has been constituted under the section, in the day-to-day working of the Tribunal it has been found that when one member avails himself of leave on ground of illness etc., the Tribunal is not able to function. It is, therefore, proposed to amend this section to provide for constitution of Benches consisting of two members and to make a suitable provision for resolving differences which may occur on any point or points between such members while disposing of an appeal.

- 2. It is also proposed to avail of the present opportunity to implement the assurance given to the Lok Sabha Committee on Subordinate Legislation [vide Tenth Report of the Committee on Subordinate Legislation (Sixth Lok Sabha) pages 14 to 15] to the effect that the rule-making provision in the Act would be suitably amplified so as to spell out expressly that the power thereunder to make rules includes the power to provide for fees for the inspection of records and the registers of the Appellate Tribunal or for obtaining certified copies of any part thereof.
 - 3. The Bill seeks to achieve the above objects.

NEW DELHI:

ZULFIQUARULLA.

The 9th May 1979.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 3 of the Bill seeks to amend sub-section (2) of section 26 of the Smugglers and Foreign Exchange Manipulators (Forfeiture of Property) Act, 1976 to insert a new clause (aa) therein. The new clause is for providing that rules may be made under the section with respect to the fees which shall be paid for the inspection of the records and the registers of the Appellate Tribunal or for obtaining a certified copy of any part thereof under sub-section (8) of section 12. This pertains to a matter of detail. Hence the delegation of legislative power is of a normal character.

BILL No. 79 of 1979

A Bill further to amend the Representation of the People Act, 1950, and the Representation of the People Act, 1951, to provide for the readjustment of assembly constituencies in the State of Sikkim.

BE it enacted by Parliament in the Thirtieth Year of the Republic of India as follows:—

- 1. (1) This Act may be called the Representation of the People (Amendment) Act, 1979.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
 - 2. In section 7 of the Representation of the People Act, 1950,—
 - (a) in sub-section (1), for the words "The total number of seats", the words, brackets, figure and letter "Subject to the provisions of sub-section (1A), the total number of seats" shall be substituted;
 - (b) after sub-section (1), the following sub-section shall be inserted, namely:—
 - "(1A) Notwithstanding anything contained in sub-section (1), the total number of seats in the Legislative Assembly of the State of Sikkim, to be constituted at any time after the commencement of the Representation of the People (Amendment)

Short title and commencement.

Amendment of section 7 of Act 43

of 1950.

Act, 1979, to be filled by persons chosen by direct election from assembly constituencies shall be thirty-two, of which—

- (a) twelve seats shall be reserved for Sikkimese of Bhutia-Lepcha origin;
- (b) two seats shall be reserved for the Scheduled Castes of that State; and
- (c) one seat shall be reserved for the Sanghas referred to in section 25A.":
- (c) in sub-section (2), for the words, brackets and figure "in sub-section (1)", the words, brackets, figures and letter "in sub-section (1) or sub-section (1A)" shall be substituted;

(d) in sub-section (3),—

- (i) for the words, brackets, figures and letter "Subject to the provisions of sub-section (3) of section 7A, the extent of each assembly constituency in all the States and Union territories except the assembly constituencies", the words "The extent of each assembly constituency in all the States and Union territories except the assembly constituencies in the State of Sikkim and" shall be substituted;
- (ii) after the words and figures "the Delimitation Act, 1972", 76 of 1972. the following shall be inserted, namely:—

"; the extent of each assembly constituency in the State of Sikkim shall be as provided for immediately before the commencement of the Constitution (Thirty-sixth Amendment) Act, 1975".

Amendment of section 5A of Act 43 of 1951.

- 3. In the Representation of the People Act, 1951, section 5A shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—
 - "(2) Notwithstanding anything contained in section 5, a person shall not be qualified to be chosen to fill a seat in the Legislative Assembly of the State of Sikkim, to be constituted at any time after the commencement of the Representation of the People (Amendment) Act, 1979, unless—
 - (a) in the case of a seat reserved for Sikkimese of Bhutla-Lepcha origin, he is a person either of Bhutla or Lepcha origin and is an elector for any assembly constituency in the State other than the constituency reserved for the Sanghas;
 - (b) in the case of a seat reserved for Scheduled Castes, he is a member of any of those eastes in the State of Sikkim and is an elector for any assembly constituency in the State;
 - (c) in the case of a seat reserved for Sanghas, he is an elector of the Sangha constituency; and
 - (d) in the case of any other seat, he is an elector for any assembly constituency in the State.".

4. On and from the commencement of this Act, the Delimitation of Parliamentary and Assembly Constituencies Order, 1976, shall stand amended as directed in the Schedule.

THE SCHEDULE

(See section 4)

AMENDMENTS TO THE DELIMITATION OF PARLIAMENTARY AND ASSEMBLY CONSTITUENCIES ORDER, 1976

In the Delimitation of Parliamentary and Assembly Constituencies Order, 1976—

- (i) in paragraph 5—
- (a) for the words "and where such name", the words "where such name" shall be substituted;
- (b) the words, brackets and letters '; and where such name is distinguished by the brackets and letters "(BL)", the seat in that constituency is reserved for the Sikkimese of Bhutia-Lepcha origin' shall be inserted at the end;
- (ii) in Schedule II, for entry 18, the following entry shall be substituted, namely:—

"18. Sikkim ... 32* 2 12

(Reserved for Sikkimese of Bhutia-Lepcha origin)";

(iii) after Schedule XIX, the following Schedule shall be inserted, namely:—

"SCHEDULE XIX-A SIKKIM

ASSEMBLY CONSTITUENCIES

Serial No., name and extent of constituency

- 1. Yoksam.—Yoksam, Lawing, Dubdi, Gerethang, Ketchopheri, Chojo, Thingling I and Thingling II blocks in Ketchopheri elakha; Chumbung, Nako, Singeng, Singdarang, Darap, Nambo, Topong and Singrapong blocks in Pemoyongtse elakha; and Tingbrom, Singlitam, Melli and Melli-Aching blocks in Melli elakha of West district.
- 2. Tashiding (BL).—Dhupidara, Narkhola, Mangnam, Labdang, Kongri, Gangep, Chungrang, Arithang, Lasso, Tashiding, Yangtey, Onglep and Bhaluthang blocks in Tashiding elakha of West district.
- 3. Geyzing.—Omchung, Geyzing, Kyongsa, Lungjik and Pemoyongtse blocks in Pemoyongtse elakha; Tikjek, Sardong and Lingchom blocks in Sangacholing elakha; and Yangthang block in Yangthang elakha of West district; and Lekship block in Wak-Sosing elakha of South district.
- 4. Dentam.—Liching, Begha, Srinagi, Gyaten, Karmatar, Sopakha, Maneybong, Mangmoo. Dentam, Sapung, Bongten, Radhukundu and Sankhu blocks in Yangthang elakha of West district.

Amendment of
Delimitation of
Parliamentary
and Assembly
Constit.
encies
Order,
1976.

Serial No., name and extent of constituency

- 5. Barmiok.—Hee, Martam, Barmiok, Barthang, Hee Patal and Pacharek blocks in Yangthang elakha; and Miyong, Megyong, Chinthang and Barfok blocks in Rinchenpong elakha of West district.
- 6. Rinchenpong (BL).—Sangdorji, Hathidunga, Jeel, Boom, Reshi (A), Reshi (B), Rinchenpong, Tadong, Samdong, Sribadam (A) and Sribadam (B) blocks in Rinchenpong elakha; and Takuthang, Chuchen, Dethang and Parengaon blocks in Chakung elakha of West district; and Sangnath block in Wak-Sosing elakha of South district.
- Chakung.—Tinjerbong, Suldong, Kamling, Singyeng, Mabong, Suntoley, Khani Sirbong, Arubotey, Samsing, Gelling, Chakung, Mendogaon, Samdong and Chumbung blocks in Chakung elakha of West district.
- 8. Soreong.—Soreong, Soreong Bazar, Singling, Timberbong, Burikhop, Kartok, Malbasey and Tarpu blocks in Chakung elakha of West district.
- 9. Daramdin.—Rumbuk, Burikhop, Lower Daramdin, Lower Thambung, Upper Thambung, Sallyng Dang, Lungchok, Siktam, Tikpur, Okhrey, Ribdi and Bhareng blocks in Daramdin elakha of West district.
- 10. Jorethang-Nayabazar.—Joom block in Chakung elakha of West district; Salghari, Dorop, Dhargaon, Chisopani, Tinek, Poklok, Denchung, Asangthang, Sambung, Kopche and Mik-Khola blocks in Namchi elakha; and Shyampani, Sorok, Manpur, Kitam and Gom blocks in Kitam elakha of South district.
- 11. Ralang (BL).—Sada, Famtam, Brang and Polot blocks in Brang elakha; Namlung, Lingding, Ralang, Jorang-Biring, Barfong and Dethang blocks in Ralang elakha, and Bakhim, Kewzing, Dalep and Lingzo blocks in Wak-Sosing elakha of South district.
- 12. Wak.—Hingdam, Lamaten, Tingmo, Tinkitam, Omchu, Chumlok, Wak, Rayong and Mangbrue blocks in Wak-Sosing elakha; Ben, Namphrik, Rabang and Sangmo blocks in Ben-Namphrik elakha; and Deo block in Temi-Tarku elakha of South district.
- 13. Damthang.—Damthang, Jaubari, Chemchey, Pabong, Boomtar, Sallybung, Maniram, Phallidara, Tingrithang, Mamley, Gumba, Pajer, Tinjir, Kamrang and Singithang blocks in Namchi elakha; and Singtam, Bul, Palum and Rong blocks in Turuk-Sumbuk elakha of South district.
- 14. Melli.—Melli Bazar, Melli Dara, Kerabari, Suntoley, Sukhbari, Turuk, Rambung, Panchgharey, Lungchok, Kamarey, Sumbuk, Kartikey, Suntoley (Sumbuk), Paiyong, Rabitar and Sadam blocks in Turuk-Sumbuk elakha of South district.
- 15. Rateypani-West Pendam (SC).—Rabikhola, Tangji, Bigmat, Rateypani and Passi blocks in Rateypani elakha; Kating-Bokran, Pamphok, Nalam Kolbung, Nagi, Palitam, Maneydara, Kabrey, Kanamtek, Turung, Donok and Mamring blocks in Namthang elakha of South district; and West Pendam block in Namthang elakha of East district.

Serial No., name and extent of constituency

- 16. Temi-Tarku.—Tanak, Tarku, Temi and Aifaltar blocks in Temi-Tarku elakha; Pabong, Daring, Todey, Reshep, Tokel, Namphing, Barmiok, Thangsing, Chalamthang, Nizarmeng, Rameng and Burut blocks in Barmiok elakha; and Parbing, Fong, Chhuba and Karek blocks in Namthang elakha of South district.
- 17. Central Pendam-East Pendam.—Singtam Bazar, Sumin, Lingjey and Mangthang blocks in Sumin elakha; and Central Pendam, East Pendam, Rangpo Bazar, Kamerey-Bhasmey, Pachak and Sajong blocks in Pendam elakha of East district.
- 18. Rhenock.—Rhenock, Tarpin, Rhenock Bazar, Mulukey, Sudanglakha and Kyongsa blocks in Rhenock elakha; Biring, Tarethang and Taja blocks in Amba-Tarethang elakha; and Linkey block in Pathing elakha of East district.
- 19. Regu.—Aritar, Dalapchand and Khamdong, blocks in Rhenock elakha; and Chuzachen, Change Lakha, North Regu, South Regu, Rongli Bazar, Singanebas, Premlakha and Subhaney Dara blocks in Chuzachen-Regu elakha of East district.
- 20. Pathing (BL).—Changay Senti and Pachey-Samsing blocks in Changay-Senti elakha; Amba and Thekabung blocks in Amba-Tarethang elakha; Parkha, Riba, Machong, Latuk and Chuchenphery blocks in Chota and Bara Pathing elakha; and Rolep, Lamaten, Lingtam, Phadamchen and Gnathang blocks in Chuzachen-Regu elakha of East district.
- 21. Loosing Pachekhani.—Chota Singtam and Aho-Yangtam blocks in Aho-Pahm-Yangtam elakha; and Namchebung, Kartok, Dikling, Chalamthang, Loosing, Pachekhani, Dikling Pachekhani, Bengthang and Pakyong Bazar blocks in Pakyong elakha of East district.
- 22. Khamdong (SC).—Manzing, Tokdey, Nehbrom, Kolthang, Pepthang and Lingmo blocks in Lingmo-Nehbrom elakha; Rangang, Yangang, Gagyong, Satam, Namphok and Sripatam blocks in Yangang elakha of South district; and Singbel, Dungdung, Khamdong, Beng, Thangsing-Bodang and Thasa blocks in Khamdong elakha of East district.
- 23. Djongu (BL).—Upper Djongu and Lower Djongu blocks in Djongu elakha of North district; and Sokpey, Lingi, Upper Paiyong, Lower Paiyong and Kahu blocks in Lingi-Paiyong elakha of South district.
- 24. Lachen Mangshila (BL).—Lachen block in Lachen elakha; Lachung block in Lachung elakha; Chungthang block in Chungthang elakha; Naganamgor, Singchit, Tung, Miyong, Sentam, Pakshep, Kajor, Singchik, Ringem. Jimchung, Nampatam and Mangan Bazar blocks in Malling elakha; and Sayem, Tanyek, Ramthang, Upper Mangshila, Lower Mangshila, Namok and Thingchen blocks in Phodong elakha of North district.
- 25. Kabi Tingda (BL).—Rongong, Tumlung and Phodong blocks in Phodong elakha; Phensang, Labi, Phamtam, Chawang, Men Rongong, Kabi-Tingda and Phaney blocks in Phensang-Kabi-Tingda elakha of North district; and Sotak, Nabey and Penlong blocks in Penlong elakha; and Lingdok and Nampung blocks in Rakdong-Tintek elakha of East district.

Serial No., name and extent of constituency

- 26. Rakdong-Tintek (BL).—Rakdong and Tintek blocks in Rakdong-Tintek elakha; Samdong-Kambol and Raley-Khase blocks in Samdong elakha; Tumin, Simik and Chandey blocks in Tumin-Chandey elakha; and Patuk, Simik, Aritir and Lingjey blocks in Khamdong elakha of East district.
- 27. Martam (BL).—Sirwani, Sakyong, Chisopani, Rabdang, Chalamthang, Byang, Nagethang, Martam, Phegyong, Nazitam and Trikutam blocks in Song-Martam elakha; and Chhuba, Nemli, Marchak, Samlik, Namin and Tumlabung blocks in Rumtek-Marchak elakha of East district.
- 28. Rumtek (BL).—Mendu, Tempyek, Sajong, Chenjey, Rawte Rumtek, Reybrok and Lingdum blocks in Ranka-Lingdum elakha; and Tadong, Samdur, Deorali, Deorali Bazar and Tadong Bazar blocks in Tadong elakha of East district.
- 29. Assam-Lingjey (BL).—Pahm, Bhusuk, Namok, Naitam, Nandok, Lingjey and Assam blocks in Aho-Lingjey-Pahm-Singtam elakha; and Tathangchen, Rongnek and Syari blocks in Tathangchen elakha of East district.
- 30. Ranka (BL).—Parbing, Ranka, Barbing, Songtong, Bortuk, Luwing, Suchakgang and Chandmari blocks in Ranka elakha of East district.
- 31. Gangtok.—Gangtok block [including (a) Gangtok Town, (b) Gangtok Bazar and (c) Development Area] of East district.

NOTE: —Any reference in this Table to a district, elakha, block or other territorial division shall be taken to mean the area comprised within that district, elakha, block or other territorial division on the 26th day of April, 1975.".

The Assembly for Sikkim formed as a result of the elections held in April 1974 is deemed to be the Legislative Assembly of the State of Sikkim duly constituted under the Constitution according to the provisions of article 371F(b)(i) thereof. It comprises 32 members of whom 15 members are elected against seats reserved for Bhutias and Lepchas of Sikkimese origin; 15 members are elected against seats reserved for Nopalis of Sikkimese origin; and one each against the seat reserved for the Scheduled Castes and the seat reserved for the Sanghas belonging to the monasteries.

- 2. Article 371F(f) of the Constitution empowers Parliament to legislate for the purpose of protecting the rights and interests of the different sections of the population of Sikkim and to make provision for the number of seats in the Legislative Assembly of the State of Sikkim which may be filled by candidates belonging to such sections and for the delimitation of the assembly constituencies from which candidates belonging to such sections alone may stand for election to the Legislative Assembly of the State of Sikkim.
- 3. Under the existing arrangements, the seats in the Assembly are reserved for the Nepalis, the Bhutias and Lepchas, the Scheduled Castes and the Sanghas belonging to monasteries. As a result, other residents of Sikkim are not eligible to contest elections to the Assembly. In the circumstances, it has become necessary to modify the existing set-up of the Legislative Assembly so as to ensure fair representation to all sections of the population of the State in the Assembly. At the same time, it is considered that if the Bhutias and Lepchas, who are the original inhabitants of Sikkim, are given representation solely according to their population ratio, their interests may not be properly safeguarded. Accordingly, it has been decided that 12 seats in the Legislative Assembly of Sikkim which may be constituted hereafter may be reserved for the Bhutlas and Lepchas. In addition, the reservation of one seat for the Sanghas may be allowed to continue. The Scheduled Caste population in Sikkim is mostly of Nepali origin. Based on their population, the Scheduled Castes in Sikkim qualify for two seats in the Legislative Assembly. Accordingly, a provision to that effect is being made. On the basis of the reservations proposed, the remaining 17 seats in the Legislative Assembly will be general seats open to all electors.
- 4. The Bill seeks to give effect to the above objects by making necessary amendments in the Representation of the People Acts, 1950 and 1951 and the Delimitation of Parliamentary and Assembly Constituencies Order, 1976.

New Delhi;

SHANTI BHUSHAN.

BILL No. 78 of 1979

A Bill further to amend the Code of Civil Procedure. 1908-

BE it enacted by Parliament in the Thirtieth Year of the Republic of India as follows:—

Short title. 1. This Act may be called the Code of Civil Procedure (Amendment) Act, 1979.

Amendment of section 123. 2. In section 123 of the Code of Civil Procedure, 1908 (hereinafter referred to as the principal Act), in sub-section (2), after clause (c), the following clause shall be inserted, namely:—

5 of 1903.

"(d) in the towns of Calcutta, Madras and Bombay, an advocate entitled to practise on the original side of the High Court.".

Amendment of First Schedule.

- 3. In the First Schedule to the principal Act,-
- (a) in Order V, in rule 20, in sub-rule (1A), for the words "a daily newspaper circulating in the locality", the words "a newspaper having circulation in the locality" shall be substituted;

(b) after Order XLIX, the following Order shall be inserted, namely:

"ORDER XLIXA

PROCEEDINGS BEFORE HIGH COURTS UNDER ARTICLE 226 OF THE CONSTITUTION

- 1. (1) Where numerous persons have the same interest with respect to any question of law or fact or any relief which may be the subject matter of a proceeding before a High Court under article 226 of the Constitution—

 Numerous persons have the same interest with Numerous persons having same interest.
 - (a) one or more of such persons may, with the permission of the Court, proceed or be proceeded against, or may defend such proceeding, on behalf of, or for the benefit of, all persons so interested;
 - (b) the Court may direct that one or more of such persons may proceed or be proceeded against, or may defend such proceeding, on behalf of, or for the benefit of, all persons so interested.
- (2) The Court shall, in every case where a permission or direction is given under sub-rule (1), at the petitioner's expense, give notice of the institution of the proceeding to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct.
- (3) Any person on whose behalf, or for whose benefit, a proceeding is instituted, or defended, under sub-rule (1), may apply to the Court to be made a party to such proceeding.
- (4) No part of the relief claimed in any such proceeding shall be abandoned, and no such proceeding shall be withdrawn, and no agreement, compromise or satisfaction shall be recorded in any such proceeding, unless the Court has given, at the petitioner's expense, notice to all persons so interested in the manner specified in sub-rule (2).
- (5) Where any person proceeding or defending in any such proceeding does not proceed with due diligence in the proceeding or defence, the Court may substitute in his place any other person having the same interest in the proceeding.
- (6) Any direction, order or writ issued or passed in a proceeding to which this rule applies shall be binding on all persons on whose behalf, or for whose benefit, the proceeding is instituted, or defended, as the case may be.

Explanation.—For the purpose of determining whether the persons who proceed or are proceeded against, or defend, have the same interest in one proceeding, it is not necessary to establish that such persons have the same ground of relief as the persons on whose behalf, or for whose benefit, they proceed or are proceeded against, or defend the proceeding, as the case may be.".

Numerous persons having same interest in proceeding under article 226.

A new sub-rule was inserted in Rule 20 of Order V of the First Schedule to the Code of Civil Procedure by the Amendment Act, 1976. This had the effect of providing that an advertisement for substituted service of summons could be published only in a daily newspaper. The All India Small and Medium Newspapers Association had represented that this has resulted in considerable hardship to over two thousand weekly newspapers, as they are ineligible for this class of advertisement. In view of this hardship and the fact that it is the Court which chooses the particular newspaper in which an advertisement has to be published having regard to the likelihood of its being seen by the persons for whom it is intended, it is proposed to amend the sub-rule, so as to enable such advertisements to be published in newspapers having circulation in a locality in which the defendant is last known to have actually and voluntarily resided, carried on business or personally worked for gain, irrespective of whether the newspaper is a daily newspaper or not.

- 2. Section 141 of the Code of Civil Procedure, 1908 makes the procedure provided in the Code in regard to suits applicable, so far as they may be, to all proceedings in any court of civil jurisdiction. The Amending Act of 1976 added an *Explanation* to this section to the effect that its provisions do not apply to proceedings under article 226 of the Constitution. It has been pointed out that this amendment has had the effect of preventing representative writ petitions being filed in the High Courts, with the result that in a large number of cases, wherein no dispute as to facts is involved but only to a question of law, identical petitions have been filed by a large number of interested persons, resulting in unnecessary delay and expense. While it is no doubt open to the High Courts to frame a rule authorising representative writ petitions, in order to make for uniformity and to avoid unnecessary litigation, it is proposed to insert new Order XLIX-A in the First Schedule to the Code, so as to enable representative writ petitions to be filed.
- 3. Section 123(2) of the Code, dealing with the composition of the Rule Committee, provided that in the High Courts of Calcutta, Madras and Bombay, the Rule Committee shall include an Attorney. With the abolition of the institution of Attorneys, reference to Attorneys in this section was deleted by the Repealing and Amending Act of 1978. The Government of Maharashtra has suggested that in place of Attorneys, representation should be given to Advocates entitled to practise on the Original Side of the High Court. It is, therefore, proposed to amend section 123(2) of the Code to provide for representation to this class of Advocates in Rule Committees.
 - 4. The Bill seeks to give effect to the above objects.

New Delhi; The 7th May, 1979. SHANTI BHUSHAN.

BILL No. 80 of 1979

A Bill further to amend the Central Excises and Salt Act, 1944, and the Additional Duties of Excise (Goods of Special Importance) Act, 1957.

BE it enacted by Parliament in the Thirtieth Year of the Republic of India as follows:—

1. This Act may be called the Central Excises and Salt and Additional Duties of Excise (Amendment) Act. 1979.

Short title.

2. In the Central Excises and Salt Act, 1944 (hereinafter referred to as the Central Excises Act), in section 2, in clause (f), after sub-clause (iv), the following sub-clauses shall be inserted, namely:—

Amendment of section 2 of Act 1 of 1944.

- "(v) in relation to goods comprised in Item No. 19 I of the First Schedule, includes bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink-proofing, organdic processing or any other process or any one or more of these processes;
- (vi) in relation to goods comprised in Item No. 21(1) of the First Schedule, includes milling, raising, blowing, tentering, dyeing or any other process or any one or more of these processes;

(vii) in relation to goods comprised in Item No. 22(1) of the First Schedule, includes bleaching, dyeing, printing, shrink-proofing, tentering, heat-setting, crease resistant processing or any other process or any one or more of these processes;".

Amendment of First Schedule of Act 1 of 1944.

- 3. In the Central Excises Act, in the First Schedule.—
- (i) in Item 19, for sub-item I, the following sub-item shall be substituted, namely:—
 - "I. Cotton fabrics, other than (i) embroidery in the piece in strips or in motifs, and (ii) fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials—
 - (a) cotton fabrics, not subjected to any process

Twenty per cent. ad valorem.

(b) cotton fabrics, subjected to the process of bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink-proofing, organdie processing or any other 'process or any two or more of these processes Twenty per cent. ad valorem.";

- (ii) in Item 21, for sub_item (1), the following sub-item shall be substituted, namely:—
 - "(1) Woollen fabrics, other than embroidery in the piece, in strips or in motifs— $\,$
 - (a) woollen fabrics, not subjected to any process

Twelve per cent. ad valorem.

(b) woollen fabrics, subjected to the process of milling, raising, blowing, tentering, dyeing or any other process or any two or more of these processes Twelve per cent. ad valorem.";

- (iii) in Item 22, for sub-item (1), the following sub-item shall be substituted. namely:—
 - "(1) Man-made fabrics, other than (i) embroidery in the piece, in strips or in motifs, and (ii) fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials—
 - (a) man-made fabrics, not subjected to any process

Twenty per cent. ad valorem plus rupees five per square metre.

(b) man-made fabrics, subjected to the process of bleaching, dyeing, printing, shrink-proofing, tentering, heat-setting, crease resistant processing or any other process or any two or more of these processes

Twenty per cent. ad valorem plus rupees five per square metre.". _____

4. In the Additional Duties of Excise (Goods of Special Importance) Act, 1957, in the First Schedule—

Amendment of First Schedule of Act 58 of 1957.

- (i) in Item 19, for sub-item I, the following sub-item shall be substituted, namely:—
 - "I. Cotton fabrics, other than (i) embroidery in the plece, in strips or in motifs, and (ii) fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials—
 - (a) cotton fabrics, not subjected to any process

Five per cent. ad valorem.

(b) cotton fabrics, subjected to the process of bleaching, mercerising, dyeing, printing, water-proofing, rubberising, shrink-proofing, organdie processing or any other process or any two or more of these processes Five per cent. ad valorem.";

- (ii) in Item 21, for sub-item (1), the following sub-item shall be substituted, namely:—
 - "(1) Woollen fabrics, other than embroidery in the piece, in strips or in motifs—
 - (a) woollen fabrics, not subjected to any process

Five per cent. ad valorem.

(b) woollen fabrics, subjected to the process of milling, raising, blowing, tentering, dyeing or any other process or any two or more of these processes Five per cent. ad valorem.";

- (iii) in Item 22, for sub-item (1), the following sub-item shall be substituted, namely: $\,$
 - "(1) Man-made fabrics, other than (i) embroidery in the piece, in strips or in motifs, and (ii) fabrics impregnated, coated or laminated with preparations of cellulose derivatives or of other artificial plastic materials—
 - (a) man-made fabrics, not subjected to any process

Seven and a half per cent. ad valorem plus rupees two per square metre.

(b) man-made fabrics, subjected to the process of bleaching, dyeing, printing, shrink-proofing, tentering, heat-setting, crease resistant processing or any other process or any two or more of these processes Seven and a half per cent. ad valorem plus rupces two per square metre.". Special provisions as to duties of excise on cotton fabrics. woollen fabrics, man-made fabrics. etc., during a certain past period and validation.

- 5. (1) Every Central Act as in force at any time during the period commencing with the appointed day and ending with the day immediately preceding the date of commencement of this Act, and providing for or relating to the levy of duties of excise on—
 - (a) "cloth", "cotton cloth" or, as the case may be, "cotton fabrics";
 - (b) "woollen fabrics";
 - (c) "rayon or artificial silk fabrics" or, as the case may be, "man-made fabrics",

shall have and shall be deemed to have always had effect during the said period as if—

- (i) such "cloth", "cotton cloth" or, as the case may be, "cotton fabrics" comprised, for the purposes of the duty leviable under that Act.—
 - (A) a sub-item covering such "cloth", "cotton cloth" or "cotton fabrics" not subjected to any process mentioned in subsclause (v) of clause (f) of section 2 of the Central Excises Act as amended by this Act; and
 - (B) a sub-item covering such "cloth", "cotton cloth" or "cotton fabrics" subjected to any such process or any two or more such processes.

and the rate of duty specified in such Act with respect to such "cloth", "cotton cloth" or "cotton fabrics" had been specified separately with respect to each of the aforementioned sub-items thereof;

- (ii) such woollen fabrics comprised for the purposes of duty leviable under that Act—
 - (A) a sub-item covering such woollen fabrics not subjected to any process mentioned in sub-clause (vi) of clause (f) of section 2 of the Central Excises Act as amended by this Act; and
 - (B) a sub-item covering such woollen fabrics subjected to any such process or any two or more such processes,

and the rate of duty specified in such Act with respect to such woollen fabrics had been specified separately with respect to each of the aforementioned sub-items thereof;

- (iii) such "rayon or artificial silk fabrics" or "man-made fabrics" comprised for the purposes of duty leviable under that Act—
 - (A) a sub item covering such "rayon or artificial silk fabrics" or "man-made fabrics" not subjected to any process mentioned in sub-clause (vii) of clause (f) of section 2 of the Central Excises Act as amended by this Act; and

(B) a sub-item covering such "rayon or artificial silk fabrics" or "man-made fabrics" subjected to any such process or any two or more such processes.

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and the rate of duty specified in such Act with respect to such "rayon or artificial silk fabrics" and "man-made fabrics" had been specified separately with respect to each of the aforementioned subitems thereof; and

- (iv) the amendments to clause (f) of section 2 of the Central Excises Act made by section 2 had been in force at all relevant times subject to the modifications that the reference therein—
 - (A) to the "goods comprised in Item No. 19 I of the First Schedule" shall be construed as a reference to such "cloth", "cotton cloth" or, as the case may be, "cotton fabrics";
 - (B) to the "goods comprised in Item No. 21(1) of the First Schedule" shall be construed as a reference to woollen fabrics;
 - (C) to the "goods comprised in Item No. 22(1) of the First Schedule" shall be construed as a reference to such "rayon or artificial silk fabrics" or, as the case may be, "man-made fabrics";

and subject to such further modifications as the context may require.

- (2) Any rule or notification or any action or thing made, issued, taken or done or purporting to have been made, issued, taken or done under a Central Act referred to in sub-section (1) before the date of commencement of this Act, with respect to or in relation to the levy of duties of excise on—
 - (a) "cloth", "cotion cloth" or, as the case may be, "cotton fabrics";
 - (b) "woollen fabrics";
 - (c) "rayon or artificial silk fabrics' or, as the case may be, "man-made fabrics".

shall for all purposes be deemed to be and to have always been as validly and effectively made, issued, taken or done as if the provisions of this section had been in force at all material times and, accordingly, notwithstanding any judgment, decree or order of any court, tribunal or other authority—

- (a) all duties of excise levied, assessed or collected or purported to have been levied, assessed or collected, before the commencement of this Act on—
 - (i) "cloth", "cotton cloth" and "cotton fabrics" subjected to any process;
 - (ii) "woollen fabrics" subjected to any process;
 - (iii) "rayon or artificial silk fabrics" and "man-made fabrics" subjected to any process,

under any such Central Act shall be deemed to be, and shall be deemed always to have been, as validly levied, assessed or collected as if the provisions of this section had been in force on and from the appointed day;

- (b) no suit or other proceeding shall be maintained or continued in any court for the refund of, and no enforcement shall be made by any court of any decree or order directing the refund of, any such duties of excise which have been collected and which would have been validly collected if the provisions of this section had been in force on and from the appointed day;
- (c) refunds shall be made of all such duties of excise which have been collected but which would not have been so collected if the provisions of this section had been in force on and from the appointed day; and
- (d) recoveries shall be made of all such duties of excise which have not been collected or, as the case may be, which have been refunded but which would have been collected or, as the case may be, would not have been refunded if the provisions of this section had been in force on and from the appointed day.
- (3) For the removal of doubts, it is hereby declared that no act or omission on the part of any person shall be punishable as an offence which would not have been so punishable if this section had not come into force.

Explanation.—In this section—

- (a) "appointed day", in relation to-
 - (i) cotton fabrics, means the 1st day of January, 1949;
- (ii) man-made fabrics, means the 28th day of February, 1954; and
 - (iii) woollen fabrics, means the 1st day of March, 1955;
- (b) "Central Act" includes any provision, in a Bill introduced in the House of the People, in respect of which a declaration was made under section 3 of the Provisional Collection of Taxes Act, 1931;

16 of 1931.

(c) "duties of excise" means duties of excise levied under any Central Act whether as such or as additional duties of excise or auxiliary duties of excise or special duties of excise or by any other name.

Central Excise duty was levied for the first time on cotton fabrics in 1949, on man-made fabrics (rayon or artificial silk fabrics) in 1954 and on woollen fabrics in 1955. From the very early stages of the textile tariff, with a view to achieving progression in the rate structure and to aligning excise control with the demands of different producing sectors, duties have been levied not only on grey fabrics but also at the stage of processing such as bleaching, dyeing and printing.

- 2. In its judgment dated 24th January, 1979 in the Real Honest Textiles and others Vs. Union of India (Special Civil Applications No. 1552 etc. of 1978), the Gujarat High Court has held that the term "fabric" as used in the tariff description "cotton fabric" would refer to something that is woven; hence it can relate only to cloth in the grey stage; processing of the grey cloth either by bleaching, dyeing or printing does not amount to manufacturing and both before and after processing it remains a fabric falling within the same item of Central Excise Tariff (item 19—cotton fabric, of the First Schedule to the Central Excises and Salt Act). The Court arrived at a similar conclusion with respect to man-made fabrics falling under item No. 22 of the same Schedule. The Court observed that processing was an excisable activity covered by the residual tariff item No. 68 of the said Schedule.
- 3. After the pronouncement of the above judgment, a number of writ petitions by other parties agitating similar points have been filed in different High Courts. If these High Courts deliver similar judgments, a considerable amount of revenue running into several crores of rupees may become refundable. An appeal against the judgment of the Gujarat High Court is pending in the Supreme Court.
- 4. The judgment of the Gujarat High Court completely upsets the arrangement regarding levy of excise duties on textile fabrics which has been followed for several years and it will have the effect of disturbing the balance evolved between different sectors of the textile industry besides putting large amounts of revenue at stake. In so far as past assessments are concerned, refunds of duties whose incidence would, in the normal course of business, have been passed on to consumers, would only mean fortuitous gains to the excise assessees.
- 5. The same problem which has arisen in the case of cotton fabrics and man-made fabrics as a result of the judgment of the Gujarat High Court may arise in the case of woollen fabrics as well.
- 6 It is, therefore, proposed to amend the Central Excises and Salt Act, 1944 and the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (which also provides for duties of excise on the aforementioned fabrics) to overcome the difficulty which has arisen as a result of the judgment of the Gujarat High Court. It is also proposed to validate the levies which have been made in the past in respect of these fabrics.
 - 7. The Bill seeks to achieve the above objects.

New Delhi;

The 14th May, 1979.

BILL No. 77 of 1979

A Bill further to amend the Constitution of India.

BE it enacted by Parliament in the Thirtieth Year of the Republic of India as follows:—

Short title. 1. This Act may be called the Constitution (Fiftieth Amendment) Act, 1979.

Amendment of Seventh Schedule.

- 2. In the Seventh Schedule to the Constitution,—
- (a) in List II—State List, in entry 15, after the words "prevention of animal diseases", the words, figures and letter "subject to the provisions of entry 17C of List III" shall be inserted;
- (b) in List III—Concurrent List, after entry 17B, the following entry shall be inserted, namely:—
 - "17C. Prohibiting the slaughter of cows and calves and other milch and draught cattle.".

The Directive Principle of State Policy contained in article 48 of the Constitution enjoins that "the State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle". In order to give effect to this directive principle, several States have enacted legislation restricting slaughter of cows and their progeny and other milch and draught cattle.

- 2. Legislation in this matter is relatable to entry 15 of the State List and consequently there is no uniformity in the legislation enacted to give effect to this directive principle. There is a strong public opinion in favour of a uniform legislation relating to prevention of slaughter of cows and calves and other milch and draught cattle. The Lok Sabha also passed a Resolution on the 12th April, 1979, urging the Government of India to ensure that ban on the slaughter of cows and calves should be effected in accordance with the Constitutional provision.
- 3. It is therefore proposed to amend the Constitution with the limited objective of securing legislative competence for Parliament to legislate on the subject of prohibition of slaughter of cows and calves and other milch and draught cattle. To achieve this objective, it is proposed to insert a new entry in the Concurrent List on this subject and to make the existing entry 15 in the State List subject to the proposed new entry in the Concurrent List.
 - 4. The Bill seeks to achieve the above object.

NEW DELHI;

SURJIT SINGH BARNALA.

The 10th May, 1979.

AVTAR SINGH RIKHY, Secretary.